

## 2 Remarks

Reconsideration of the objections and rejections set forth in the Office Action mailed 20 June 2008 is respectfully requested.

Claims 25 and 26 remain pending in the present application. Both claims are amended herein to recite an antibody specific to the viral capsid of an non-naturally occurring virus, in which the antibody is prepared by isolating a nucleic acid putatively encoding a gene encoding a protein forming at least a portion of the viral capsid from a non-naturally occurring viral genome; programming a cell free translation system with the nucleic acid to express the protein; determining that capsid assembly has occurred as an indication that the viral gene is required for capsid assembly; and raising the antibody against the protein. Claim 26 further refines claim 25 by reciting that the antibody be a monoclonal antibody. Support for the amendments can be found in the original claims and throughout the Specification, especially claim 1. The current claims do not introduce new matter.

### 2.1 Objection to the Disclosure Under the First Paragraph of 35 U.S.C. § 132(a)

The Examiner objected to the amendment to the Specification made in the Amendment filed 30 January 2006 for allegedly introducing new matter in violation of 35 U.S.C. § 132(a). This objection is respectfully traversed in view of the following remarks.

Initially, the Applicants respectfully note that the 35 U.S.C. § 132(a) provides in pertinent part that "[n]o amendment shall introduce new matter into the *disclosure of the invention.*" 35 U.S.C. § 132(a) (1999) (emphasis added). As the Examiner noted, the amendment to the Specification was made to perfect a claim of priority to two prior U.S. patent applications. Office Action Mailed 20 January 2008 at 3-4. The Applicants respectfully note that claims of priority are not considered to be part of the disclosure of the invention. For example, the Applicants respectfully draw the Examiner's attention to M.P.E.P. § 608, which enumerates the elements of the Disclosure, this section does not include claims

to priority. Indeed, a claim to priority is not part of the Disclosure, because it is not part of the description of the invention; rather it is the perfection of a legal right by the Applicants. So, an amendment introducing or modifying a priority claim cannot introduce any "new matter" as that term is used in 35 U.S.C. § 132(a). The Applicants respectfully submit that the amendment complies with 35 U.S.C. § 132(a), and they respectfully request that the Examiner withdraw the objection.

## **2.2 Objections to the Drawings**

The Applicants note the Examiner's objections to the Drawings and have submitted corrected drawings herewith.

## **2.3 Rejections Under 35 U.S.C. § 101**

Claims 25 and 26 were rejected as allegedly reciting an invention that is not statutory subject matter. The Applicants respectfully submit that the current claims recite statutory subject matter.

## **2.4 Rejections Under 35 U.S.C. § 102(b)**

Claims 25 and 26 were rejected as allegedly anticipated under 35 U.S.C. § 102(b) by M<sup>c</sup>Guire, et al. or independently by Hardy, et al. These rejections are respectfully traversed in view of the following remarks.

The Applicants respectfully note that neither M<sup>c</sup>Guire, et al. nor Hardy, et al., alone or in combination, shows or suggests the unique combination of an antibody specific to the capsid of a non-naturally occurring virus, in which the antibody is prepared by isolating a nucleic acid putatively encoding a gene encoding a protein forming at least a portion of the viral capsid from a non-naturally occurring viral genome; programming a cell free translation system with the nucleic acid to express the protein; determining that capsid assembly has occurred as an indication that the viral gene is required for capsid assem-

bly; and raising the antibody against the protein. The Applicants respectfully request that the Examiner withdraw the rejections.

### 3 Conclusion

In view of the foregoing, it is respectfully submitted that the above-identified patent application is in condition for allowance. A Notice of Allowance is therefore respectfully requested. If the claim is deemed not to be in condition for allowance after consideration of this Response, a telephone interview with the Examiner is hereby requested. Please telephone the undersigned at (510) 337-7871 to schedule an interview.

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Respectfully submitted,

  
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#### Attachments:

- 1) A transmittal sheet;
- 2) Replacement drawings
- 3) A sequence listing; and
- 4) A receipt indication postcard.